

02-23671

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:  
Case Number BKY 02-91364-DDO

Roberta Rivet,

Debtor(s)

NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank Trust Company Americas as Trustee and Custodian moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m. on October 20, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than October 15, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than October 8, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 4, 2002. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On March 20, 2002, Roberta M. Rivet made, executed and delivered to America's MoneyLine Inc. her Note (hereinafter referred to as the "Note"), in the original principal amount of \$120,500.00 bearing interest from the date thereof at the rate of 8.375% per annum until paid, payable in monthly installments of \$915.89 commencing on May 1, 2002 and on the first day of each and every calendar month thereafter until the principal and interest

were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On March 20, 2002, to secure the payment of the Note, Roberta M. Rivet executed and delivered to America's MoneyLine Inc. her Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Ramsey County, Minnesota, legally described as follows:

Lots 1 and 2, Block 2, Barney, Norton & Kingsley's First Addition to St. Paul, according to the recorded Plat thereof, and situate in Ramsey County, Minnesota.

which property has an address of: 985 Woodbridge Street, St. Paul, MN 55117. The mortgage was filed for record in the office of the Recorder, County of Ramsey, on February 13, 2003, as Document No. 3588636, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a plan dated July 15, 2002, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the May, 204 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

4 payments @ \$1076.43	\$4,305.72
4 late charges @ \$45.79	183.16
Attorneys Fees & Costs	<u>650.00</u>
TOTAL POST-PETITION	\$5,138.88

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$118,461.93
Interest	7,266.89
Accumulated late fees	183.16
Attorneys Fees & Costs	<u>650.00</u>
TOTAL	\$126,561.98

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01, 510.02.

12. By reason of the foregoing, good cause exists to lift the

automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

**13. This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Deutsche Bank Trust Company Americas as Trustee and Custodian moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: \_\_\_\_\_

9-22-01

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

VERIFICATION

I, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

9-20-04

Signed:

[Signature]

Fidelity National Foreclosure Solutions  
1270 Northland Drive, Suite 200  
Mendota Heights, MN 55120



11456832

## NOTE

March 20, 2002

ST. PAUL

Minnesota

[Date]

[City]

[State]

985 Woodbridge Street

St. Paul, Minnesota 55117

[Property Address]

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 120,500.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is America's MoneyLine Inc.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.375 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

### 3. PAYMENTS

#### (A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1ST day of each month beginning on May 1ST, 2002. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on April 1, 2017, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 4880 Cox Road, Glen Allen, Virginia 23060, or at a different place if required by the Note Holder.

#### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 915.89

### 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

### 5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

### 6. BORROWER'S FAILURE TO PAY AS REQUIRED

#### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

#### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

#### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

#### (D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

#### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expense in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

MULTISTATE FIXED RATE NOTE - Single Family

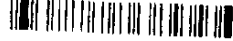
DOC# 3588636

Certified Recorded On  
FEB. 13, 2003 AT 08:00AM

Signed:

OFFICE CO. RECORDER  
RAMSEY COUNTY MN

Fee Amount: \$30.00



Loan Number \_\_\_\_\_ [Space Above This Line For Recording Data]

After recording return to:  
Outsource Solutions  
Attn: Larry Palmer  
2833 Trinity Square Dr., Ste 135  
Carrollton, TX 75006

## MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on March 20, 2002  
The mortgagor is  
Robert M Rivet, An Unmarried Woman

("Borrower"). This Security Instrument is given to  
America's Moneyline Inc.

which is organized and existing under the laws of The State Of Virginia, and whose  
address is 4880 COX ROAD  
GLEN ALLEN, Virginia 23060 ("Lender"). Borrower owes Lender the principal sum of  
One Hundred Twenty Thousand Five Hundred and 00/100ths  
Dollars (U.S. \$120,500.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
April 1, 2017 and for interest at the yearly rate of 8.375

percent. This Security Instrument secures to Lender: (a) the repayment of  
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

6040-6R(MN) (9702)

Form 3024 9/98  
Amended 5/99  
initials *RAK*

VNPM MORTGAGE FORMS - (800)521-7281

1 of 12

ASSIGNMENT OF MORTGAGE

MMSI#:11456832

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned,  
**AMERICA'S MONEYLINE, INC.**

c/o 4708 Mercantile Drive, Ft. Worth, TX 76137, (Assignor),  
by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to **DEUTSCHE BANK TRUST COMPANY AMERICAS F/K/A BANKERS TRUST COMPANY**, as Trustee and Custodian by **Saxon Mortgage Services Inc. f/k/a Meritech Mortgage Services, Inc.**, its attorney-in-fact, whose address is 1761 East Saint Andrew Pl., Santa Ana, CA 92705, its successors or assigns (Assignee). Said mortgage dated 03/22/02 executed by

**ROBERTA M RIVET**

to **AMERICA'S MONEYLINE, INC**

and filed for record on 02/13/03 as Doc No.3588636

(or Book , Page ), in

the office of the County recorder of **RAMSEY , MN.**

Dated:11/21/03

**AMERICA'S MONEYLINE, INC.**

By

Melissa Books  
**Melissa Books**  
**Asst. Vice President**

By

Wayne Biver  
**Wayne Biver-Senior Vice President**

STATE OF TEXAS

COUNTY OF TARRANT

I HEREBY CERTIFY that on 11/21/03, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared **Melissa Books** and

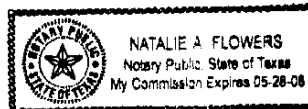
**Wayne Biver** personally known, who, being each by me duly sworn both did say that they are respectively the **Asst. Vice President** and **Senior Vice President** of **AMERICA'S MONEYLINE, INC.**

, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its board of directors and said **Melissa Books**

and **Wayne Biver** acknowledge said instrument to be the free act and deed of said corporation.

Natalie A. Flowers

Notary Public



My commission expires:

Drafted: T.Temple/NTC,2100 Alt 19 N., Palm Harbor, FL 34683

When Recorded Return To: **Nationwide Title Clearing**  
2100 Alt 19 North  
Palm Harbor, FL 34683



MTCON TM 2615T NG X

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 02-91364-DDO  
Chapter 13

Roberta Rivet,

Debtor(s)

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MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas as Trustee and Custodian ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$5,138.88.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 3 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$126,561.98.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.



Dated: \_\_\_\_\_

9-22-04

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

By /e/ Nancy A. Nordmeyer

Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA       )  
                                      ) SS  
COUNTY OF HENNEPIN       )

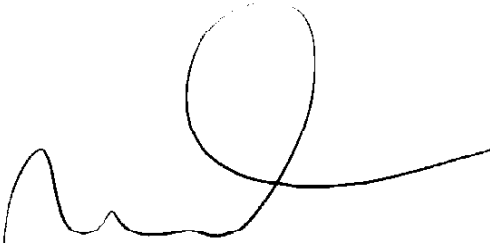
I, **Stephanie Pilegaard** says that on September 22, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Roberta Rivet  
985 Woodbridge Street  
St. Paul, MN 55117

Curtis Walker, Esq.  
4356 Nicollet Avenue South  
Minneapolis, MN 55409

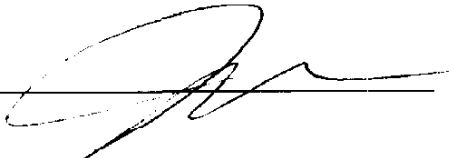
Jasmine Z. Keller, Trustee  
12 South 6th Street, #310  
Minneapolis, MN 55402

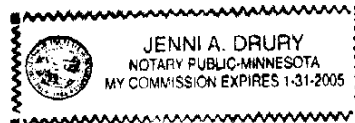
U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Minneapolis, MN 55415

  
\_\_\_\_\_  
Stephanie Pilegaard

Subscribed and sworn to before me September 22, 2004.

Notary





02-23671  
0111456832

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 02-91364-DDO

Roberta Rivet,  
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 20, 2004.

**THIS CAUSE** coming to be heard on the Motion of Deutsche Bank Trust Company Americas as Trustee and Custodian, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED,**

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Deutsche Bank Trust Company Americas as Trustee and Custodian, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lots 1 and 2, Block 2, Barney, Norton & Kingsley's First Addition to St. Paul, according to the recorded Plat thereof, and situate in Ramsey County, Minnesota.

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court